

Mine Safety and Health Administration

Office of Assessments

# Introduction

- Increase Understanding of MSHA's Assessment Program
- Purpose of Civil Penalty

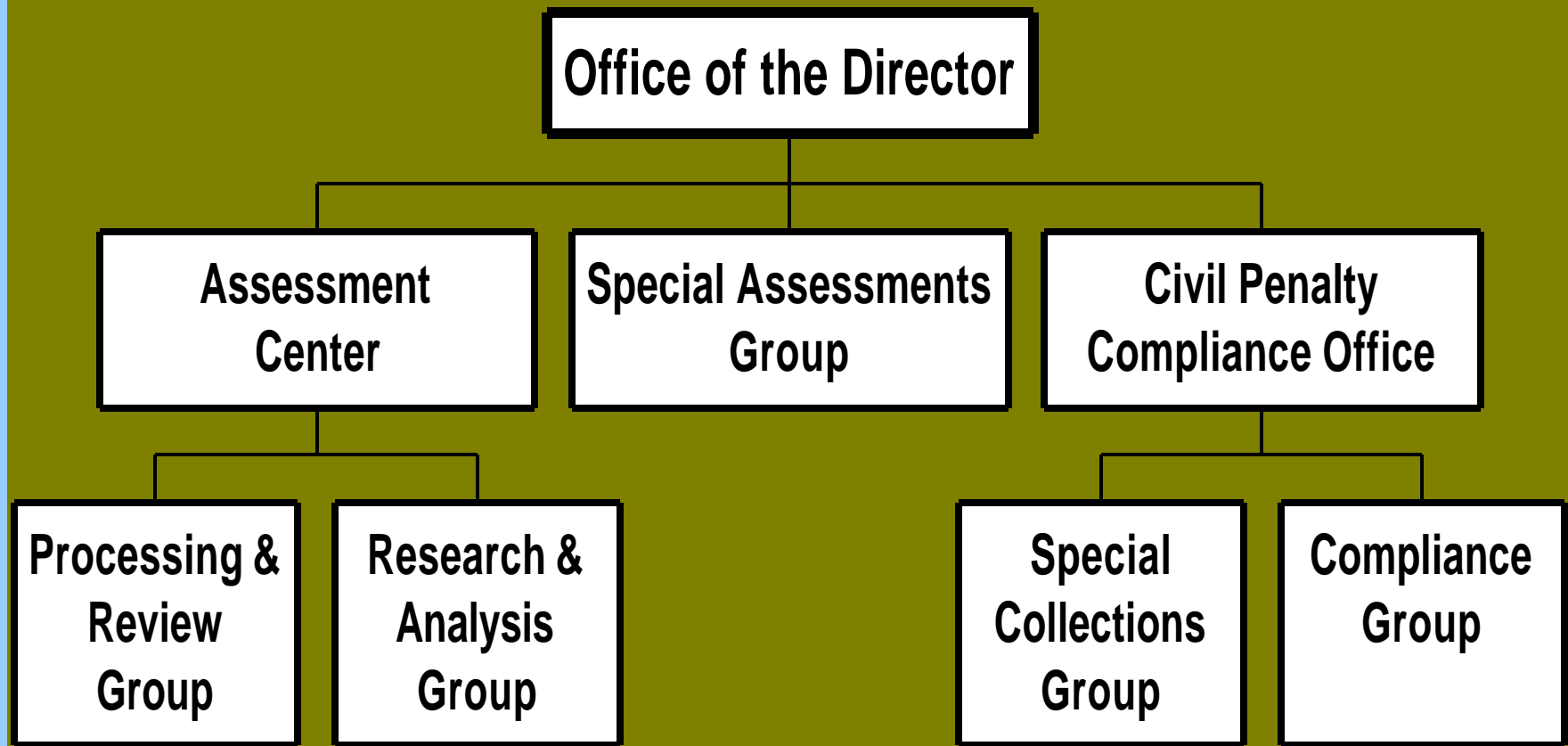
# Topics of Discussion

- Three Groups of the Office
- Six Assessment Criteria
- Three Types of Assessments
- Special Assessments
- Helpful Hints

# Three Groups of the Office

- Special Assessments Group
- Civil Penalty Compliance Office
- Assessment Center

# *Office of Assessments*



# Special Assessments Group

- Special Assessments
- Develop/Maintain Assessment Policy
- Maintain Assessment Data Base Management System
- Coordinate Assessment Information and Activities
- Resolve Discrepancies/Disputes
- Information Requests (FOIA)



# Wilkes-Barre Assessment Center

- Process Violations into Cases
- Assemble Case Files for Civil Penalty Compliance Office
- Conduct Research/Analysis



Sitting: Denise Colura, Sandra Kundrak, Kay O'Connor, Walter Fink, Dennis Shalkowski, Cindy Kuzni, Robin Brennan  
Standing: Joe Reikrantz, Franklin Goodman, Henry Rogulski, Dan Owca, Dennis Smith, Kathy Kachmar, Angela Terpi

# Civil Penalty Compliance Office

- Track/Maintain Status of Civil Penalty Cases
- Prepare Cases for Litigation
- Process Payments
- Collect Delinquent Penalties





# Civil Penalty Can Be!

\$55 - \$55,000

# Six Assessment Criteria

- History of Previous Violations
- Size of Operator's Business
- Negligence of the Operator
- Gravity of the Violation
- Good Faith
- Ability to Continue in Business

# History

- Paid or Final Order Violations
- 24-month Period
- Production Operators - VPID
- Independent Contractors - Avg. Per Year
- Ownership Changes

## History - Mine Operators

<u>Violations Per Inspection Day</u>	<u>Penalty Points</u>
0 - 0.3 .....	0
Over 0.3 - 0.5.....	2
Over 0.5 - 0.7.....	4
Over 0.7 - 0.9.....	6
Over 0.9 - 1.1.....	8
Over 1.1 - 1.3.....	10
Over 1.3 - 1.5.....	12
Over 1.5 - 1.7.....	14
Over 1.7 - 1.9.....	16
Over 1.9 - 2.1.....	18
Over 2.1.....	20

## History - Independent Contractors

<u>Number of Violations</u>	<u>Penalty Points</u>
1 - 5 .....	0
6 - 10.....	2
11 - 15 .....	4
16 - 20 .....	6
21 - 25 .....	8
26 - 30 .....	10
31 - 35 .....	12
36 - 40 .....	14
41 - 45 .....	16
46 - 50 .....	18
Over 50 .....	20

# Excessive History of Violations

- Greater Than 2.1 Violations per Inspection Day (VPID) for Operators (20 Penalty Points)
- More Than 50 Violations per Year for Independent Contractors (20 Penalty Points)
- Does Not Apply to Mines With 10 or Fewer Violations
- Only Applies to 104(a) Non-S&S Timely Abated Citations

# Size

- Tonnage/Hours Worked
- Production Operators/Independent Contractors
- Sources of Data
- Previous Calendar Year

## Size of Coal Mine

<u>Annual Tonnage of Mine</u>	<u>Penalty Points</u>
0 - 15,000 . . . . .	0
Over 15,000 - 30,000 . . . . .	1
Over 30,000 - 50,000 . . . . .	2
Over 50,000 - 100,000. . . . .	3
Over 100,000 - 200,000 . . . . .	4
Over 200,000 - 300,000 . . . . .	5
Over 300,000 - 500,000 . . . . .	6
Over 500,000 - 800,000 . . . . .	7
Over 800,000 - 1.1 million . . . . .	8
Over 1.1 million - 2 million . . . . .	9
Over 2 million . . . . .	10

## Size of Controlling Entity - Coal

<u>Annual Tonnage</u>	<u>Penalty Points</u>
0 - 100,000 . . . . .	0
Over 100,000 - 700,000 . . . . .	1
Over 700,000 - 1.5 million. . . . .	3
Over 5 million - 10 million . . . . .	4
Over 10 million . . . . .	5

## Size of Metal/Nonmetal Mine

<u>Annual Hours Worked at Mine</u>	<u>Penalty Points</u>
0 - 10,000 .....	0
Over 10,000 - 20,000 .....	1
Over 20,000 - 30,000 .....	2
Over 30,000 - 60,000 .....	3
Over 60,000 - 100,000 .....	4
Over 100,000 - 200,000 .....	5
Over 200,000 - 300,000 .....	6
Over 300,000 - 500,000 .....	7
Over 500,000 - 700,000 .....	8
Over 700,000 - 1 million .....	9
Over 1 million .....	10



## Size of Controlling Entity - Metal/Nonmetal

<u>Annual Hours Worked</u>	<u>Penalty Points</u>
0 - 60,000 .....	0
Over 60,000 - 400,000 .....	1
Over 400,000 - 900,000 .....	2
Over 900,000 - 3 million .....	3
Over 3 million - 6 million .....	4
Over 6 million .....	5



## Size of Independent Contractor

<u>Annual Hours Worked at All Mines</u>	<u>Penalty Points</u>
0 - 10,000 .....	0
Over 10,000 - 20,000 .....	1
Over 20,000 - 30,000 .....	2
Over 30,000 - 60,000 .....	3
Over 60,000 - 100,000 .....	4
Over 100,000 - 200,000 .....	5
Over 200,000 - 300,000 .....	6
Over 300,000 - 500,000 .....	7
Over 500,000 - 700,000 .....	8
Over 700,000 - 1 million .....	9
Over 1 million .....	10

# Negligence and Gravity

- Evaluated by Issuing Inspector
- Indicated on Citation/Order Form

## Negligence

<u>Categories</u>	<u>Penalty Points</u>
No Negligence . . . . .	0
Low Negligence. . . . .	10
Moderate Negligence . . . . .	15
High Negligence . . . . .	20
Reckless Disregard. . . . .	25

### Gravity - Likelihood

<u>Likelihood of Occurrence</u>	<u>Penalty Points</u>
No Likelihood .....	0
Unlikely.....	2
Reasonably Likely .....	5
Highly Likely .....	7
Occurred.....	10

### Gravity - Severity

<u>Severity of injury or illness if the event occurred or were to occur</u>	<u>Penalty Points</u>
No Lost Work Days .....	0
Lost Work Days or Restricted Duty ..	3
Permanently Disabling .....	7
Fatal .....	10

### Gravity - Persons Affected

<u>Number of persons potentially affected if the event occurred or were to occur</u>	<u>Penalty Points</u>
0 .....	0
1 .....	1
2 .....	2
3 .....	4
4 - 5 .....	6
6 - 9 .....	8
More than 9 .....	10

[illegible]

9. Violation	A. Health		B. Section of Act					-				C. Part/Section of Title 30 CFR	7	5	.	1	7	2	2	(
	Safety	x																		
	Other																			

## Section II -- Inspector's Evaluation

## 10. Gravity:

A. Injury or Illness (has) (is): No Likelihood ☐ Unlikely ☒ Reasonably Likely ☐ Highly Likely ☐ Occ

B. Injury or Illness could reasonably be expected to be:

No Lost Workdays	<input type="checkbox"/>	Lost Workdays or Restricted Duty	<input checked="" type="checkbox"/>	Permanently Disabling
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C. Significant and Substantial (See Reverse):	Yes		No	x	D. Number of Persons Affected
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11. Negligence (check one)

A. None ☐ B. Low ☐ C. Moderate ☒ D. High ☐ E. Reckless Disregard ☐

## 12. Type of Action

1	0	4	-	a	-	,		-	-
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13. Type of Issuance (check one)

Citation	X	Order		Safeguarc
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## 14. Initial Action

initial Action      D. Written  
A. Citation   ☐   B. Order   ☐   C. Safeguard   ☐   Notice   ☐

E. Citation/  
Order  
Number

F. Dated	M
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## 15. Area or Equipment

## 16. Termination Due

	Mo	Da	Yr
A. Date			

B. Time (24

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# Good Faith

- Evaluated by Inspector
- Based on Timely Abatement of Violation
- Effects on Penalty Amounts
  - 30% reduction
  - additional 10 points
  - no single penalty

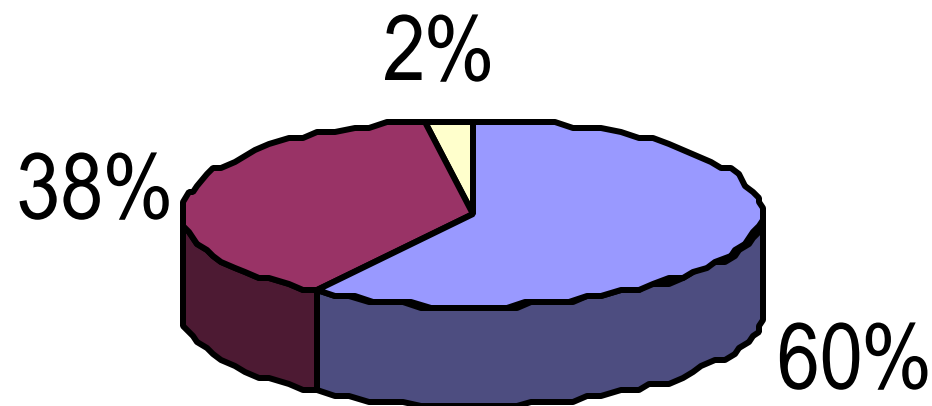
# Ability to Continue in Business

- No Effect Initially Presumed
- May Affect Penalty Amounts
- Procedures for Consideration
  - must be within 30 days of assessment
  - submit written request to District
  - include financial statements

# Three Types of Assessments

- Single Penalty
- Regular Formula
- Special

# Assessed Violations by Type of Assessment



- Single Penalty
- Regular Assessment
- Special Assessment



# Single Penalty Assessment

- Computer-generated
- Flat \$55
- 104(a) non-S&S Citations That Are Timely Abated
- No Excessive History of Violations

**Note:**

**Timely Abated Means - -  
“Terminated Within the Time Set  
by the Issuing Inspector”**

# Regular Assessment

- Computer-generated
- Orders and 104(d) Citations
- 104(a) S&S Citations
- 104(a) non-S&S Citations Not Qualifying for Single Penalty
- If Timely Abated - 30% Reduction in Penalty
- If Not Timely Abated - 10 Additional Penalty Points
- Range \$66 - \$55,000

## Penalty Conversion Table

<u>Points</u>	<u>Penalty (\$)</u>	<u>Points</u>	<u>Penalty(\$)</u>
20 or fewer . . . . .	66	81. . . . .	10,450
30. . . . .	149	82. . . . .	11,550
40. . . . .	297	83. . . . .	12,650
50. . . . .	796	84. . . . .	13,750
60. . . . .	2,796	85. . . . .	14,850
70. . . . .	5,500	86. . . . .	16,500
80. . . . .	9,350	87. . . . .	18,700
		88. . . . .	20,900
		89. . . . .	23,100
		90. . . . .	25,300
		91. . . . .	27,500
		92. . . . .	30,250
		93. . . . .	33,000
		94. . . . .	35,750
		95. . . . .	38,500
		96. . . . .	41,250
		97. . . . .	44,000
		98. . . . .	46,750
		99. . . . .	49,500
		100 . . . . .	55,000

# Special Assessment

- No Fixed Formula
- Serious Violations
- Use Six Assessment Criteria

**MSHA Districts Conduct Reviews of  
Certain Violations for Special Assessment!**

# **Violations Considered for Special Assessment**

- fatalities and serious injuries
- unwarrantable failure
- operating in defiance of a closure order
- denial of right of entry
- individuals liable under Section 110c of the Mine Act
- imminent danger
- acts of discrimination under Section 105c of the Mine Act
- extraordinarily high negligence, gravity, or other unique aggravating

# Unique Aggravating Circumstances Means

- Violations That Do Not Fall Into Any of the Other Special Assessment Categories
- Examples: Multiple Violations of Health Standards, Part 48, Part 50

# Special Assessors Review

- Citation/Order
- Special Assessment Review Form
- Inspector's Notes
- Conference Notes
- Accident Report/Memorandum/Data Sheet
- Sketches/Photographs
- Relevant Portions of Plans

# Factors Affecting Penalty Amounts

- Type of Citation/Order Issued
- Size of the Operation
- History of Previous Violations
- Inspector's Evaluation
- Type of Assessment Requested



# Examples for Discussion

# Example: Guard Missing on Conveyor Belt Drive



- Belt Not Running
- No One Working in Area
- Violation Immediately Corrected
- 104(a) Non-S&S Citation, Timely Abated
- Single Penalty Assessment
- Without Timely

## Example 1 - 104(a) Non - S&S Citation

<u>Criterion</u>	<u>Timely Abated Penalty Points</u>	<u>Not Timely Abated Penalty Points</u>	<u>Timely Abated But With Excessive History</u>
Mine Size	5	5	5
Co. Size	3	3	3
History	10	10	20
Likelihood	2	2	2
Severity	7	7	7
# Persons	1	1	1
Negligence	15	15	15
Good Faith	<u>0</u>	<u>10</u>	<u>0</u>
Total	NA	53	53
Penalty	\$55	\$1,247	\$1,247
30% Red.	NA	None	-\$375
Final Penalty	\$55	\$1,247	\$872

# Example: Guard Missing on Conveyor Belt Drive

- Belt Running
- Employee Shoveling Beneath Belt Drive
- 104(a) S&S Citation, Timely Abated
- Regular Assessment, 30% Good Faith Reduction
- Without Timely Abatement, Regular



## Example 2 - 104(a) - S&S Citation Regular Assessment

<u>Criterion</u>	<u>Timely Abated Penalty Points</u>	<u>Not Timely Abated Penalty Points</u>
Mine Size	5	5
Co. Size	3	3
History	10	10
Likelihood	5	5
Severity	7	7
# Persons	1	1
Negligence	15	15
Good Faith	<u>0</u>	<u>10</u>
Total	46	56
Penalty	\$453	\$1,815
30% Red.	\$136	None
Final Penalty	\$317	\$1,815

# Average Regular Assessments

- With 30% Reduction - \$266
- Without 30% Reduction - \$537

# Example: Guard Missing on Conveyor Belt Drive



- Belt Running
- Employee Shoveling Beneath Belt
- Foreman Present, Directing Work
- 104(d) Unwarrantable Failure Citation/Order
- Regular or Special Assessment

### Example 3 - 104(d) Citation/Order Regular Assessment

<u>Criterion</u>	Citation	Citation	<u>Order</u>
	Timely Abated	Not Timely Abated	
	<u>Penalty Points</u>	<u>Penalty Points</u>	<u>Penalty Points</u>
Mine Size	5	5	5
Co. Size	3	3	3
History	10	10	20
Likelihood	5	5	5
Severity	7	7	7
# Persons	1	1	1
Negligence	20	20	20
Good Faith	<u>0</u>	<u>10</u>	<u>NA</u>
Total	51	61	51
Penalty	\$936	\$3,098	\$936
30% Red.	-\$281	None	NA
Final Penalty	\$655	\$3,098	\$936



# Average Special Assessments

- Non-accident-related - \$2,000
- Accident-related - \$30,000
- Director, Officer, Agent - \$645
- Miner Smoking - \$170
- Discrimination - \$2,328

# Points to Remember

- Inspections Are Mandatory by Law
- Violations Must Be Cited
- Cited Violations Receive a Penalty
- Purpose of the Penalty is to Encourage Safety and Health

# Helpful Hints

- Maintain Active Safety and Health Program
- Maintain Low Violation Average
- Timely Abate Any Violations
- Pay Penalties On Time
- Take Advantage of Opportunities to Influence Outcome of Citations/Orders

# Pre-assessment Opportunities



- Travel with Inspector & Participate in Close-out Conference
- Safety & Health Conference
- Notice of Contest/Application for Review

# Travel with the Inspector/ Close-out Conference

- Travel with Inspector to see First-Hand the Violations
- Discuss Conditions at the end of the Inspection
- Closeout is an Informal Meeting with Inspector
- First Opportunity for Input
- Notification of Conference Rights

# Safety & Health Conference

- Meeting with District Manager
- Operator or Miners' Representative May Request
- Request Within 10 Days of Notification of Rights
- Request Through District Manager

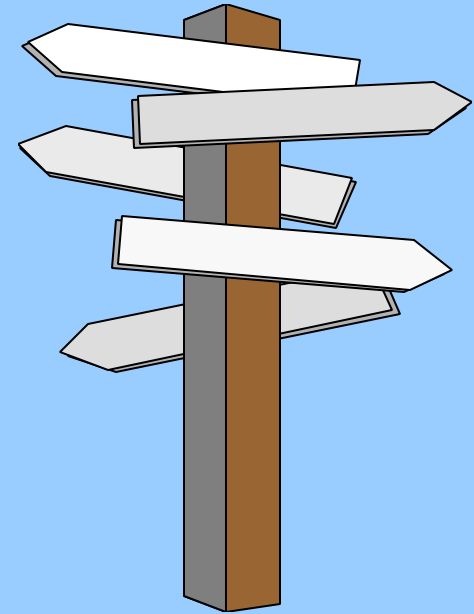


# Notice of Contest/ Application for Review

- Legal Proceeding
- Operator, Miners' Representative,  
or Miner May File
- File Within 30 Days of  
Citation/Order Issue
- File in Writing With Commission
- Does Not Affect Enforcement  
Process

# Post-assessment Opportunities

- Financial Review
- Civil Penalty Contest
- Appeals

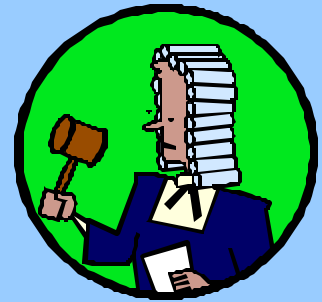




# Financial Review

- Operator May Request
- Request Within 30 Days of Receipt of Proposed Assessment
- Request in Writing to District Manager
- Include Financial Statements
- Stays the 30-Day Pay/Contest Requirement
- Penalty Reduction May Be Granted or Denied

# Civil Penalty Contest



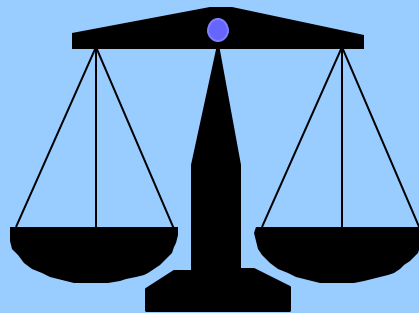
- Legal Proceeding
- Operator May File
- File in Writing to MSHA Civil Penalty Compliance Office
- Settle or Go to Trial
- Penalty Decided by Administrative Law Judge

# Appeal ALJ Decision

- Operator or MSHA May Appeal
- File Petition for Discretionary Review
- File Within 30 Days of ALJ Decision
- File With the Federal Mine Safety and Health Review Commission
- May be Granted or Denied
- Commission Hears/Decides Case

# Further Options

- Appeal to U.S. Court of Appeals
- Appeal to U.S. Supreme Court



# Delinquent Debt Collections

- MSHA Collectors
- Treasury
- Justice

# SBREFA

- Small Business Regulatory Enforcement Fairness Act
- 1-888-REG-FAIR (1-800-734-3247)
- 500 W. Madison Street, Suite 1240,  
Chicago, IL 60661

***Questions and Comments Are Welcomed By The  
Office of Assessments At Any Time!***

**You Can Call Steve Webber (Director), Jim  
Custer, or Bob Painter at (703) 235-1484.**

**Or, You Can E-Mail Us at:**

**swebber@msha.gov**

**rpainter@msha.gov or jcuster@msha.gov**

**Also, you may want to check out MSHA's Web  
Site at [www.msha.gov](http://www.msha.gov)!**

Thank You!

